

AO 241 (Rev. 5/85)

PETITION UNDER 28 USC § 2254 FOR WRIT OF
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District MASSACHUSETTS
Name JAMES W. BARTON	Prisoner No. W 80583	Case No. 1453/2001-2004
Place of Confinement NCCI P.O. BOX 466; @.GARDNER, MA 01440		
Name of Petitioner (include name under which convicted) JAMES W. BARTON		Name of Respondent (authorized person having custody of petitioner) COMMISSIONER OF CORRECTION; SUPT. NCCI @ GARDNER, MA
The Attorney General of the State of: MASS.		
PETITION		
1. Name and location of court which entered the judgment of conviction under attack _____ SUPERIOR COURT - MIDDLESEX (COURT LOST JURISDICTION G.L.Ch.263 §9)		
2. Date of judgment of conviction JULY 26, 2002		
3. Length of sentence 3-to-5 YRS; 3-to-5 YRS CONCURRENT (3 times)		
4. Nature of offense involved (all counts) B & E BUILDING, Poss of burglarious tool, Destruction of property and Larceny of bldg.		
5. What was your plea? (Check one)		
(a) Not guilty <input type="checkbox"/>		
(b) Guilty <input checked="" type="checkbox"/>		
(c) Nolo contendere <input type="checkbox"/>		
If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:		
TRIAL COURT EXECUTED A DEFUNCT TRUE BILLS 302 DAYS AFTER		
ARREST; DENIAL OF PROMPT AND SPEEDY TRIAL WITHIN (6) months.		
6. If you pleaded not guilty, what kind of trial did you have? (Check one)		
(a) Jury <input type="checkbox"/>		
(b) Judge only <input type="checkbox"/> NOT APPLICABLE		
7. Did you testify at the trial?		
Yes <input type="checkbox"/> No <input type="checkbox"/> " "		
8. Did you appeal from the judgment of conviction?		
Yes <input type="checkbox"/> No <input type="checkbox"/>		

9. If you did appeal, answer the following:

- (a) Name of court Not Applicable
- (b) Result /
- (c) Date of result and citation, if known /
- (d) Grounds raised /

(e) If you sought further review of the decision on appeal by a higher state court, please answer the following:

- (1) Name of court // //
- (2) Result / /
- (3) Date of result and citation, if known // //
- (4) Grounds raised / /

(f) If you filed a petition for certiorari in the United States Supreme Court, please answer the following with respect to each direct appeal:

- (1) Name of court // //
- (2) Result / /
- (3) Date of result and citation, if known // //
- (4) Grounds raised / /

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes ☒ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court (Middlesex) Revised + Revoked Rule 29 M.R. Crim P.
- (2) Nature of proceeding reduction of sentence
- (3) Grounds raised Return of Cancer, Both eyes still bad and am still asking for treatment, due to alcoholism and drugs.

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result

Not Applicable

(6) Date of result

(b) As to any second petition, application or motion give the same information:

(1) Name of court

Not Applicable

(2) Nature of proceeding

(3) Grounds raised

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result

(6) Date of result

(c) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☒ No ☐

(2) Second petition, etc. Yes ☐ No ☐

(d) If you did *not* appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

Exhausted State Remedies in the SJC.

12. State *concisely* every ground on which you claim that you are being held unlawfully. Summarize *briefly* the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your available state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

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For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, *you should raise in this petition all available grounds* (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: PETITIONER WAS NOT LAWFULLY ARRESTED BY LAWS GOVERNING
LAWFUL AREST PROCEDURES. MGL, CH. 218 §35; CH. 263 §4, §44.

Supporting FACTS (state *briefly* without citing cases or law) _____

COURT DID NOT HAVE CRIMINAL JURISDICTION OVER PETITIONER;

TRIAL COURT DID NOT EXECUTE TRUE BILLS OF INDICTMENTS MEETING
THE AUTHENTICATION REQUISITES BY LAWS, FEDERAL & STATE.

TITLE 28 USCS §1738; MGL CH. 212 §26.

B. Ground two: THE PRE-TRIAL DELAYS OF 302 DAYS VIOLATED THE 180 DAYS
LIMITATIONS GUARANTEED BY THE 6TH AMEND. U.S. CONST. LAW.

Supporting FACTS (state *briefly* without citing cases or law): _____

See petition

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C. Ground three: TRIAL JUDGE WAS JUDICIALLY BIAS AND ACTED IN

CONTEMPT OF THE LAW

Supporting FACTS (state *briefly* without citing cases or law):

D. Ground four: PRISON OFFICIALS NEVER RECEIVED LEGAL

"COMMANDS" FROM A JUDGE OF THE TRIAL COURT TO COMMIT AND HOLD ME.

Supporting FACTS (state *briefly* without citing cases or law):

THE TRIAL JUDGE NEVER PERSONALLY SIGNED AN ORDER/WARRANT WHICH
THE PRISON COULD ARREST AND DETAIN ME.

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state *briefly* what grounds were not so presented, and give your reasons for not presenting them:

NOT APPLICABLE

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?
Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing ATTORNEY JOHN OSLER 180 CAMBRIDGE ST.
CAMBRIDGE , MASS. 02141

(b) At arraignment and plea

(6)

(date)

James W. Barton
Signature of Petitioner

CIVIL COVER SHEET

JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I) PLAINTIFFS

PETITIONER

JAMES W. BARTON

DEFENDANTS

RESPONDENT

COMMISSIONER, MASS. DEPT. OF CORR.
SUPT. NCCI

II) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF
(EXCEPT IN U.S. PLAINTIFF CASES)

III) COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

IV) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

JAMES W. BARTON
NCCI P.O. BOX 466
GARDNER, MA 01440

ATTORNEYS (IF KNOWN)

BASIS OF JURISDICTION (PLACE AN "X" IN ONE BOX ONLY)

☒ U.S. Government Plaintiff
☐ U.S. Government Defendant

☒ Federal Question (U.S. Government Not a Party)
☐ Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

ORIGIN (PLACE AN "X" IN ONE BOX ONLY)

☒ Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> Medicare Act <input type="checkbox"/> 2 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 3 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 4 Stockholders' Suits <input type="checkbox"/> 5 Other Contract <input type="checkbox"/> 6 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 430 Liquor Laws <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 450 Airline Regs. <input type="checkbox"/> 460 Occupational Safety/Health <input type="checkbox"/> 490 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Litigation <input type="checkbox"/> 760 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 167 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395m) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DMC/DMMW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7809	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 881 Agricultural Acts <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 890 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 895 Constitutionality of State Statutes <input type="checkbox"/> 899 Other Statutory Actions

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

TITLE 28 §§2241-2254 (STATE REMEDIES)

PETITION FOR WRIT OF HABEAS CORPUS OF A STATE PRISONER WHO IS exhausted HELD IN FALSE IMPRISONMENT AND SUFFERING ILLNESS OF CANCER

REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

JURY DEMAND: ☐ YES ☐ NO

RELATED CASE(S) IF ANY (See instructions): none

JUDGE _____ **DOCKET NUMBER** _____

SIGNATURE OF ATTORNEY OF RECORD

James W. Barton Pro Se

OFFICE USE ONLY

RECEIPT # _____ **AMOUNT** _____ **APPLYING IFP** _____ **JUDGE** _____ **MAG. JUDGE** _____

03-40271-ENIG

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTSFILED
IN CLERKS OFFICE

1. TITLE OF CASE (NAME OF FIRST PARTY ON EACH SIDE ONLY)
JAMES W. BARTON (PETITIONER) vs. COMM. DEPT. OF CORR. A-19
2. CATEGORY IN WHICH THE CASE BELONGS BASED UPON THE NUMBERED NATURE OF SUIT CODE LIST ON THE CIVIL COVER SHEET. (SEE LOCAL RULE 40.1(A)(1))
- | | | |
|---|------|---|
| — | I. | 160, 410, 470, 535, R.23, REGARDLESS OF NATURE OF SUIT |
| — | II. | 195, 368, 400, 440, 441-444, 540, 550, 625, 710, 720, 730, 740, 790, 791, 820, 830, 840, 850, 890, 892-894, 895, 950. |
| — | III. | 110, 120, 130, 140, 151, 190, 210, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 370, 371, 380, 385, 450, 891. |
| ✓ | IV. | 220, 422, 423, 430, 460, 510, 530, 610, 620, 630, 640, 650, 660, 690, 810, 861-865, 870, 871, 875, 900. |
| — | V. | 150, 152, 153. |
3. TITLE AND NUMBER, IF ANY, OF RELATED CASES. (SEE LOCAL RULE 40.1(E))
none
4. HAS A PRIOR ACTION BETWEEN THE SAME PARTIES AND BASED ON THE SAME CLAIM EVER BEEN FILED IN THIS COURT? no
5. DOES THE COMPLAINT IN THIS CASE QUESTION THE CONSTITUTIONALITY OF AN ACT OF CONGRESS AFFECTING THE PUBLIC INTEREST? no
IF SO, IS THE U.S.A. OR AN OFFICER, AGENT OR EMPLOYEE OF THE U.S. A PARTY? (SEE 28 USC 1403)
no
6. IS THIS CASE REQUIRED TO BE HEARD AND DETERMINED BY A DISTRICT COURT OF THREE JUDGES PURSUANT TO TITLE 28 USC 2284? no
7. DO ALL PARTIES IN THIS ACTION RESIDE IN THE CENTRAL SECTION OF THE DISTRICT OF MASSACHUSETTS (WORCESTER COUNTY)? (SEE LOCAL RULE 40.1(C)) YES ✓ OR IN THE WESTERN SECTION (BERKSHIRE, FRANKLIN, HAMPDEN OR HAMPSHIRE COUNTIES)? (SEE LOCAL RULE 40.1(D)) YES no
8. DO ALL OF THE PARTIES RESIDING IN MASSACHUSETTS RESIDE IN THE CENTRAL AND/OR WESTERN SECTIONS OF THE DISTRICT? YES Worcester County
(a) IF YES, IN WHICH SECTION DOES THE PLAINTIFF RESIDE? Worcester-Gardner
9. IN WHICH SECTION DO THE ONLY PARTIES RESIDING IN MASSACHUSETTS RESIDE? Central
10. IF ANY OF THE PARTIES ARE THE UNITED STATES, COMMONWEALTH OF MASSACHUSETTS, OR ANY GOVERNMENTAL AGENCY OF THE U.S.A. OR THE COMMONWEALTH, DO ALL OTHER PARTIES RESIDE IN THE CENTRAL SECTION ✓ OR WESTERN SECTION _____

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME JAMES W. BARTONADDRESS NCCI P.O. BOX 466; GARDNER, MA 01440

TELEPHONE NO. _____

(COVER.SHT-08/90)